IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.4140 OF 2005

Shri Balkrishna Sahadu Gaikwad, .. Petitioner

vs

Sou.Pushpa Baban Gaikwad & ors. .. Respondents

Mr Prataprao J.Sinde, for the petitioner.

Mr A.Sarwate for respondent nos 1 and 2.

CORAM : D.B.BHOSALE,J.

DATE : 03.10.2005.

PC:

1. Heard the learned counsel for the parties.

2. By this petition, the petitioner has challenged the order dated 4.4.2005 passed below Exhibit-148-application in Regular Civil Suit No.185 of 2002 by which the said application has been dismissed. Exhibit-148 application was filed by the petitioner-plaintiff seeking deletion of defendant no.5 from the array of the defendants. The application was rejected by the trial Court considering the nature of the suit and the counter-claim raised by the defendant

for recovery of possession. There does not seem to be any dispute that the petitioner-plaintiff and defendant no.5 are in possession of the suit property. Mr Shinde, learned counsel for the petitioner, submitted that there is no counter-claim as observed by the learned Judge and that fact has been admitted by the respondent in paragraph (g) of their affidavit. I do not wish to enter into a controversy as to whether the purported counter-claim is in conformity with Order VIII rule 6A and 6B of the Code of Civil Procedure since that was not the issue before the trial Court. It is open for the petitioner to challenge its legality/maintainability at appropriate stage. Considering the nature of the order, I am not inclined to interfere with the impugned order under Article 227 of the Constitution of India. The writ petition is, accordingly, dismissed.

(D.B.BHOSALE, J.)